STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED March 30, 2010
v	No. 287661 Macomb Circuit Court
TAYLOR WAYNE SUTPHIN, Defendant-Appellant.	LC No. 2008-000499-FC

Before: Hoekstra, P.J., and Stephens and M.J. Kelly, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of assault with intent to rob while armed, MCL 750.89. Defendant was sentenced to 81 months to 20 years' imprisonment for his conviction. He was acquitted of assault with a dangerous weapon, MCL 750.82. Defendant now appeals as of right. We affirm.

First, defendant argues that the trial court improperly denied his motion to suppress a statement he made to a police officer. Specifically, defendant alleges that suppression was necessary because he was not advised of his *Miranda*[1] rights by the police officer before being questioned even though he was in custody at the time. "This Court reviews de novo a trial court's ultimate decision on a motion to suppress evidence." *People v Akins*, 259 Mich App 545, 563-564; 675 NW2d 863 (2003). Though this Court reviews the entire record de novo, this Court reviews a trial court's factual findings for clear error. *People v Daoud*, 462 Mich 621, 629; 614 NW2d 152 (2000).

At the outset, we believe that defendant improperly frames this issue as a custodial interrogation requiring *Miranda* protections. The proper analysis is that of a questioning following a *Terry*[2] stop. "Under certain circumstances, a police officer may approach and temporarily detain a person for the purpose of investigating possible criminal behavior even though there is no probable cause to support an arrest." *Terry v Ohio*, 392 US 1, 22; 88 S Ct 1868; 20 L Ed 2d 889 (1968); *People v Jenkins*, 472 Mich 26, 32-33; 691 NW2d 759 (2005). A

[1] *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

[2] *Terry v Ohio*, 392 US 1, 30-31; 88 S Ct 1868; 20 L Ed 2d 889 (1968).

Terry stop is proper and does not violate the Fourth Amendment if the officer has a reasonable suspicion that criminal activity is afoot. *Id.* at 32-33. "Whether an officer has a reasonable suspicion to make such an investigatory stop is determined case by case, on the basis of an analysis of the totality of the facts and circumstances." *Id.* "Of course, not every encounter between a police officer and a citizen requires this level of constitutional justification. A 'seizure' within the meaning of the Fourth Amendment occurs only if, in view of all the circumstances, a reasonable person would have believed that he was not free to leave." *Id.* at 32.

In the present case, pursuant to *Terry*, *supra*, the police officer was permitted to approach, temporarily detain and make a reasonable inquiry into possible criminal activity after he arrived on the scene and a witness identified defendant as the person who committed the alleged crime. The officer testified that while he was prepared to handcuff the defendant, he was also unsure of what role he had in any criminal enterprise. We give deference to the trial judge's finding regarding the officer's credibility. The witness identification gave rise to a reasonable suspicion that criminal activity was afoot. *Jenkins, supra* at 32-33. The police officer was justified conducting a *Terry stop* and engaging in a reasonable inquiry. In this case, the inquiry was limited to a general question: "What's going on?" Because defendant's temporary detainment constituted a valid *Terry* stop and the scope of the questioning was general, defendant was not entitled to *Miranda* warnings and his statement to Officer Watson was admissible. See *Berkemer v McCarty,* 468 US 420, 437-442; 104 S Ct 3138; 82 L Ed 2d 317 (1984) (*Miranda* warnings are generally not required during a stop pursuant to *Terry*). Defendant's statement made to the officer was admissible, and we affirm the trial court's ruling in that regard.

Second, defendant contends the trial court improperly scored offense variable (OV) 4, psychological injury to victim, MCL 777.34, for ten points because there was no evidence in the record to establish that the victim suffered a serious psychological injury. MCL 777.34(1)(a) provides that OV 4 may be scored for ten points if "[s]erious psychological injury requiring professional treatment occurred to a victim." When determining the appropriate score for OV 4, the fact that the victim did not seek professional treatment is not conclusive. MCL 777.34(2). A review of the record reveals that the victim thought defendant would kill her and was fearful during the incident. The fear felt by the victim during the incident combined with her disclosure at sentencing, that she suffered from lingering fear and anxiety and that she was considering mental health treatment for this fear and anxiety, supports the trial court's decision to score OV 4 for ten points. The trial court did not abuse its discretion. See *People v Apgar*, 264 Mich App 321, 329; 690 NW2d 312 (2004) ("Because the victim testified that she was fearful during the encounter with defendant, we find that the evidence presented was sufficient to support the trial court's decision to score OV 4 for ten points."); *People v Drohan*, 264 Mich App 77, 90; 689 NW2d 750 (2004), ("The evidence of the victim's disrupted life, her nightmares, and her plans to seek treatment supported the ten-point score. No error occurred with respect to the scoring of OV 4.").

Affirmed.

/s/ Joel P. Hoekstra
/s/ Cynthia Diane Stephens
/s/ Michael J. Kelly